IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7609 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

FARIDHUSEN HUSENMIYAN SHAIKH

Versus

COMMISSIONERO F POLICE

Appearance:

1. Special Civil Application No. 7609 of 2004

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MS HB PUNANI, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 15/12/2004

ORAL JUDGEMENT

1. Heard ld. counsel Mr. Uday Thakar for ld. counsel Mr. Anil S.Dave for the petitioner detenu and

ld. AGP Ms. Punani. Affidavit-in-reply filed by the Commissioner of Police, Ahmedabad City tendered today by ld. AGP Ms. Punani is taken on record.

2. By this petition under Article 226 read with Articles 21 & 22(5) of the Constitution of India, the petitioner detenu has challenged the legality and validity of the order of detention dated 11.06.2004 passed by the Commissioner of Police, Ahmedabad City, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner detenu has been branded as "boot-legger" as defined under Sec.2(b) of the PASA Act.

3. The grounds for detention supplied to the detenu petitioner indicate that for recording subjective satisfaction, the detaining authority has mainly considered registration of two offences being CR No.5033/2004 registered with Sola High Court Police Station and CR No. 5008/2004 registered with DCB, Ahmedabad City Police Station, on 13.03.2004 and 06.06.2004 respectively for the offences punishable under Sections 66B, 65AE, 81, 98, 99 and 66B, 65AE, 81 and 116 of The Bombay Prohibition Act respectively. The detenu was arrested on 06.06.2004 in connection with second offence and thereafter, when he was in custody, his formal arrest was effected on 10.06.2004 in connection with the first offence. It is argued that the detenu has been wrongly implicated in the offence registered on 13.03.2004. Without entering into the merits of, ld. counsel Mr. Thakar has focussed his arguments mainly on the ground that it was not necessary for the sponsoring authority to place papers for obtaining preventive detention orders as the petitioner was in judicial custody in connection with the offence registered with Sola High Court Police Station. This fact also emerges from the grounds of detention supplied to the detenu. Hence, it is the submission of ld. counsel that since the detenu was in judicial custody, there was no need to pass order of detention as preventive measure, especially when no satisfactory reasons are emerging from the grounds of detention that though the petitioner was in judicial custody, the order of preventive detention was warranted. This Court has turned down such orders in more than one cases and in support of her submission, ld. counsel Mr. Thakar has placed reliance on the decision in the case of Amritlal & Ors. v/s Union Govt. through the Secretary, Ministry of Finance & Ors, reported in AIR 2000 SC 3675. I have gone through the cited decision and

in my view, the ratio propounded in the cited decision would squarely apply to the facts of the present case and on this ground also, the impugned order of detention requires to be quashed and set aside.

4. In number of cases, this Court has consistently placed reliance on the ratio of the decision in the case of Amrutlal & Others v/s Union of India, Through Secretary, Ministry of Finance & Ors., AIR 2000 SC 3675 and has quashed the order of detention where detenu on the date of passing and/or execution of detention order, was either in judicial or in police custody. The reason that there is "likelihood to be released on bail", is different from "likelihood of his moving application for bail". In the cited decision, detenu was in custody. In these facts and circumstances, ratio of the decision in the case of Vinod Singh V/s District Magistrate, Dhanbad, AIR 1986 SC 2090 also would help the present petitioner-detenu. So, on this sole ground, impugned order of detention requires to be quashed.

7. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 11.06.2004 passed by the Police Commissioner, Ahmedabad City, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[C.K. BUCH, J]

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